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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,047	01/17/2002	Russ Egbert	1533.1510001/SRL/J-S	1188
26111	7590	02/16/2006	EXAMINER	
STERNE, KESSLER, GOLDSTEIN & FOX PLLC 1100 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			BECKER, DREW E	
			ART UNIT	PAPER NUMBER
			1761	
DATE MAILED: 02/16/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action Before the Filing of an Appeal Brief</b>	Application No.	Applicant(s)
	10/050,047	EBERT ET AL. -
	Examiner	Art Unit
	Drew E. Becker	1761

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 08 February 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- The period for reply expires 3 months from the mailing date of the final rejection.
- The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)); or any extension thereof (37 CFR 41.37(e)); to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:

- They raise new issues that would require further consideration and/or search (see NOTE below);
- They raise the issue of new matter (see NOTE below);
- They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- They present additional claims without canceling a corresponding number of finally rejected claims.

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTO-324).

5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_ under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Claim(s) objected to: \_\_\_\_\_ under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Claim(s) rejected: 26-31 and 34-46 under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**AFFIDAVIT OR OTHER EVIDENCE**

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s) \_\_\_\_\_.

13.  Other: \_\_\_\_\_.

4.  The reply is filed under 37 CFR 1.136(a). A shortened statutory period for reply is being provided. The reply must be filed within 2 months from the mailing date of this Advisory Action. The extension fee set forth in the attached Notice of Non-Compliant Amendment (PTO-324) is calculated from the date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed.

5.  Applicant's reply is filed under 37 CFR 1.136(b). A shortened statutory period for reply is being provided. The reply must be filed within 2 months from the mailing date of this Advisory Action. The extension fee set forth in the attached Notice of Non-Compliant Amendment (PTO-324) is calculated from the date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed.

6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, directly filed amendment canceling the non-allowable claim(s).

7.  The reply is filed under 37 CFR 1.136(c). A shortened statutory period for reply is being provided. The reply must be filed within 2 months from the mailing date of this Advisory Action. The extension fee set forth in the attached Notice of Non-Compliant Amendment (PTO-324) is calculated from the date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed.

Continuation of 3. NOTE: the term "dry" does not appear to be supported. Also, the components did not all need to be "dry" prior to this proposed amendment.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's specification defines "soy protein product mixture" as being "a mixture comprising one or more of soy protein concentrate, isolated soy proteins, soy flour; sodium acid pyrophosphate, and other ingredients, such as canugeenan and/or corn starch" in paragraph [0037]. This definition appears to contradict the components of at least claims 26, 42. Also, paragraph [0057] does not provide support for carrageenan and pectin being classified as gums. Although Appendix B listed them as gums, the applicant's disclosure did not classify them as such. It should be noted that the term "dry" is not mentioned even once in the entire written disclosure. Furthermore, it is not clear what level of moisture would be considered dry. Applicant argues that Cho et al used denatured protein. However, the instant claims do not exclude denatured proteins.

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*Drew Becker*  
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PRIMARY EXAMINER  
2-19-06